



# **Specialized Proceedings Before Immigration Judges**



# Specialized Proceedings

## Credible Fear Review

- *Notice of Referral to Immigration Judge, Form I-863*

## Reasonable Fear Review

- *Notice of Referral to Immigration Judge, Form I-863*

## Withholding-Only Proceedings

- *Notice of Referral to Immigration Judge, Form I-863*

## Deportation Proceedings

- *Order to Show Cause*

## Exclusion Proceedings

- *Notice to Applicant for Admission Detained for Hearing*

## Asylum-Only Proceedings

- *Notice of Referral to Immigration Judge, Form I-863*

## Rescission Proceedings

- *Notice of Intent to Rescind and Respondent's "Answer," denying allegations or requesting a hearing before an IJ.*

## Claimed Status Review

- *Notice of Referral to Immigration Judge, Form I-863, with the alien's sworn statement claiming status.*



# Credible Fear Review

## Applicability:

- Applicants for admission **found inadmissible** by DHS.
- Aliens subject to **expedited removal**.
- **Asylum Officer finds no credible fear** of persecution or torture.

**Standard of review:** Considering credibility of alien's statements, is there a **significant possibility** alien could establish eligibility for asylum or withholding? 8 C.F.R. § 1003.42(d).

- *De novo* review: IJ is not bound by determination of Asylum Officer.
- **Lower than the “reasonable possibility”** standard applicable to reasonable fear reviews.
- **Lower than the “well-founded fear”** standard needed to receive asylum.

**Decision:** If IJ **finds** credible fear, IJ **vacates** Asylum Officer's determination and DHS files Notice to Appear. If the IJ **finds no credible fear**, IJ **affirms** Asylum Officer's determination and **return** case to DHS for execution of administrative removal order. 8 C.F.R. § 1208.30(g)(2)(iv).

- Review to be completed within 7 days of DHS finding, ideally within 24 hours. ICPM ¶ 7.4(e)(iv)(A).



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# Credible Fear Review (continued)

## Evidence:

- The administrative “written record” from DHS:
  - Asylum Officer’s report, notes, analysis, summary of facts stated by the applicant, materials relied upon by Asylum Officer, *Notice and Order of Expedited Removal*, Form I-860.
- IJ “may receive” material **oral or written statements**. 8 C.F.R. §§ 1003.42, 1208.30(g)(2)(ii).
  - Testimony of alien must be under oath, administered by the IJ.
  - IJ takes “into account the **credibility**” of the alien’s statements. 8 C.F.R. § 1003.42(d).

**Appeals:** No right to appeal the IJ’s decision to the BIA – it is administratively final. 8 C.F.R. § 1208.30(g)(2)(iv)(A).



# Reasonable Fear Review

## Applicability:

- Aliens **whose prior removal order is being reinstated.**
- Aliens who are **administratively ordered removed** based on an aggravated felony conviction.
- **DHS finds no reasonable fear** of persecution or torture, and,
- Alien **requests IJ review.** 8 C.F.R. § 1208.31(a),(g).

**Standard of review:** **Reasonable possibility** that alien would be persecuted or tortured in the country of removal. 8 C.F.R. § 1208.31(c).

- Higher than the “**significant possibility**” standard applicable to credible fear reviews.
- Bars to Withholding of Removal are not considered.

**Decision:** If the IJ finds no reasonable fear, **return** to DHS for execution of administrative removal order. 8 C.F.R. § 1208.31(g)(1). If the IJ finds reasonable fear, the alien **may apply** for Withholding of Removal (the alien is ineligible for asylum). 8 C.F.R. § 1208.31(g)(2).

- IJ provides rationale for concurrence with the Asylum Officer within 10 days of DHS finding. ICPM ¶ 7.4(e)(iv)(A).



## Reasonable Fear Review (continued)

**Evidence:** The administrative “record of determination” from DHS. 8 C.F.R. § 1208.31(g).

- Other “evidence may be introduced at the discretion of the Immigration Judge.” ICPM ¶ 7.4(e)(iv)(E).
- Testimony of witnesses to be under oath or affirmation. 8 C.F.R. § 1003.34.

**Appeals:** No right to appeal the IJ’s reasonable fear decision to the BIA – it is administratively final. 8 C.F.R. § 1208.31(g)(1)(iv)(A).

- However, the Ninth Circuit accepts Petitions for Review, finding it has jurisdiction to review an IJ’s adverse reasonable fear review. See, e.g., *Ayala v. Sessions*, 855 F.3d 1012, 1021 (9th Cir. 2017) (IJ abused discretion in finding no reasonable fear where a protected ground was “a reason” for extortion); *Andrade-Garcia v. Lynch*, 820 F.3d 1076 (9th Cir. 2016) (IJ’s negative reasonable fear finding supported by “substantial evidence”).



# Withholding-Only Proceedings

## Applicability:

- Aliens subject to a **reinstated removal order** where an Asylum Officer (or IJ) has found a **reasonable fear** of persecution or torture. INA § 241(a)(5); 8 C.F.R. § 1208.2(c)(2)(i).
- Aliens **administratively ordered removed** based on an **aggravated felony** conviction, and where an Asylum Officer has found a **reasonable fear of persecution or torture**. INA § 238; 8 C.F.R. § 1208.2(c)(2)(ii).

**Proceedings:** Review limited to assessing eligibility for withholding of removal and protection under CAT. 8 C.F.R. § 1208.2(c)(3)(i).

**Appeals:** Parties have the same right to appeal as in removal proceedings. 8 C.F.R. § 1208.31(g)(2)(ii).



# Deportation and Exclusion Proceedings

**Applicability:** Proceedings conducted in certain cases that **commenced prior to April 1, 1997**.

- **Deportation proceedings** apply to aliens in the United States who have violated immigration law.
  - In deportation proceedings, hearing notices must be either **personally served** on the alien or sent by **certified mail**, at least 14 days prior to the hearing. ICPM ¶ 7.2(b)(ii).
- **Exclusion proceedings** apply to aliens who arrive at a port of entry and are not admissible to the United States.
- Deportation and exclusion proceedings have been **replaced by removal proceedings**. ICPM ¶ 7.2(a).

**Relief: Burdens of proof** and forms of relief **may differ** between deportation/exclusion proceedings and removal proceedings. ICPM ¶ 7.2(a)(ii).

- Aliens in deportation proceedings may be eligible for **Suspension of Deportation** (similar to Cancellation of Removal in removal proceedings). INA § 244.
- LPRs may be eligible for a **INA § 212(c) waiver**.



# Asylum-Only Proceedings

**Applicability:** Certain aliens who either **express a fear of persecution** or torture to an immigration officer, or who apply for asylum with DHS. 8 C.F.R. §§ 1208.2(c), 1208.5(b).

- Stowaways, Visa Waiver Program applicants and overstays, crewmembers, S Visa-holders and applicants.
- Aliens administratively removed by DHS pursuant to INA § 235(c)(1) and referred to an IJ by the DHS regional director.

**Proceedings:** Limited to determining whether alien is eligible for asylum, withholding, and protection under CAT.

- Parties prohibited from raising issues of admissibility, deportability, eligibility for waivers, and eligibility for other forms of relief. 8 C.F.R. § 1208.2(c)(3)(i).

**Decision and Appeal:** Parties have the same right to appeal as in removal proceedings. 8 C.F.R. §§ 1208.2(c)(3)(i), 1240.15.



# Rescission Proceedings

## Applicability:

- Alien adjusted status to LPR **within the past 5 years**,
- DHS subsequently determined **ineligible for adjustment of status**, and
- Alien **requests a hearing** before an IJ or **denying any allegation** in the *Notice of Intent to Rescind*.  
8 C.F.R. §§ 1246.1, 1246.3.

**Standard of review:** DHS bears the burden of proving ineligibility for adjustment by “**clear, unequivocal, and convincing evidence.**” *Matter of N-M-A*, 22 I&N Dec. 312, 346 (BIA 1998).

**Decision and Appeal:** IJ’s order shall direct that the proceeding be **terminated** or that the **adjustment of status be rescinded**. 8 C.F.R. § 1246.6.

- IJ may find rescission has been established if Respondent admits all allegations, concedes adjustment of status should be rescinded, and the IJ determines no issues of law or fact remain. 8 C.F.R. § 1246.2.
- Parties have right to appeal the decision to the BIA. 8 C.F.R. § 1246.7.



# Claimed Status Review

## Applicability:

- When an alien is **found inadmissible by DHS**,
- Ordered **administratively removed** (expedited removal),
- **Claims to be a United States citizen, lawful permanent resident, asylee, or admitted as a refugee**,
- DHS is **unable to verify** the claimed status, and
- Alien provides a **sworn statement** under oath under penalty of perjury. INA § 235(b)(1)(C); 8 C.F.R. § 1235.3(b)(5)(i).

**Standard of review:** IJ determines whether the alien has the claimed status. 8 C.F.R. § 1235.3(b)(5)(iv).

- INA, regulations, and Practice Manual do not articulate a standard of proof.

**Decision:** If the claimed status is not verified, IJ affirms order issued by DHS and DHS will remove the alien. If the claimed status is verified, IJ will terminate proceedings and vacate the expedited removal order. 8 C.F.R. § 1235.3(b)(5)(iv).

**Evidence:** Parties may introduce oral or written statements and other evidence may be submitted at IJ's discretion. ICPM ¶ 7.4(f)(v).

**Appeals:** No right to appeal decision to the BIA.



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# Questions?